

IN RE: )  
STEVEN ALLAN HARGROVE, ) Bankruptcy Case No. 95-91453  
Debtor. )

This matter having come before the Court on a Motion by Debtor to Avoid the Fixing of a Lien Under Section 522(f) of Chapter 5 of Title 11 of the U.S.C. and Motion for Turnover of Funds in the Alternative filed by the Debtor on December 11, 1995; the Court, having heard arguments from Defendants, American General Finance and Community Bank, and being otherwise advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

(f) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is -

Case law in the Seventh Circuit, and particularly in the Central District of Illinois, has held that where a creditor is in receipt of funds which are the subject of a wage garnishment against the debtor, the creditor merely holds an inchoate judicial lien on those funds until such time as the creditor receives an order from the State Court directing that the funds be turned over to the creditor. In the case at bar, it appears that Creditors, American General Finance, Community Bank, and Carle Foundation Hospital may have received substantial sums of money from wage garnishment proceedings against the Debtor herein without the benefit of a State Court turnover order. As such, pursuant to 11 U.S.C. § 522(f)(1), the Debtor can potentially avoid those liens

and receive return of the monies to the extent that the Creditor's lien on those funds impairs his personal property exemption.

Although it is apparent that the Debtor may be entitled to some relief under 11 U.S.C. § 522(f)(1) as to the creditors mentioned above, the Court is without sufficient information to determine what, if any, funds should be returned to the Debtor by any of the creditors, subject to the instant Motion. Counsel for Creditors, American General Finance and Community Bank, indicated confusion as to what Code section the Debtor was proceeding under given communication from the Debtor that he was seeking return of preferential transfers pursuant to 11 U.S.C. § 547. This confusion is further exacerbated by the fact that counsel for the Debtor/Movant failed to appear at the hearing on this matter to present any evidence in support of his Motion. As a result of the failure of Debtor's counsel to appear in support of the instant Motion and the confusion noted at hearing, the Court is unable to properly rule on the Motion before it. As such, the Court finds it necessary to reschedule this matter for a final evidentiary hearing at which time Debtor's counsel should appear and be prepared to present evidence as to the extent which the Creditors' liens impair his personal property exemption.

ENTERED: January 4, 1996.

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GERALD D. FINES  
United States Bankruptcy Judge

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GERALD D. FINES  
United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

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